

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 19263 OF 1995

Between :

Syed Zikarullah son of Alimullah

... Petitioner

And :

The District and Sessions Judge, Nizamabad

... Respondent

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 19263 OF 1995

ORAL ORDER :

Heard the learned counsel for the petitioner. There is no representation on behalf of the respondent, who is served.

The petitioner while working as Central Nazir, District Court, Nizamabad, was also placed in Full Additional Charge of the post of Translator during the period 28-03-1991 till 31-10-1992 for about 19 months. For the said service, he was paid additional allowance for holding full additional charge of the post of Translator for the period 28-03-1991 to 31-10-1992. According to the petitioner, though an audit inspection took place there is no objection raised on the payment of additional allowance to the petitioner for the aforesaid period.

While so by the impugned proceedings dated.09-08-1995 the respondent directed recovery of the amount of Rs.7,766/- paid to the petitioner as full additional charge allowance for the period dated.28-03-1991 to 31-10-1992 on the ground that the petitioner is not entitled to additional allowance as it exceeds the period of six(6) months and for payment of the such additional allowance exceeding six months

prior sanction of the Government is required as per Fundamental Rule.49. The petitioner's allegation that no notice or opportunity was given to him prior to the passing of the impugned order, is not rebutted. In fact there is neither a counter-affidavit on behalf of the respondent nor is there any representation by counsel on behalf of the respondent. The petitioner also pleads that he is no way responsible for the failure of the respondent or the authorities to have taken the permission of the Government for payment of the additional charge allowance for the period in excess of six months, as required under F.R.49. The petitioner also asserts that he was paid full additional remuneration with a break of two or three days for every six months and therefore there is no violation of F.R.49.

The petitioner has now retired from service. The impugned order has been stayed by an interim order granted by this Court on 25-08-1995 and therefore the recovery of installments ordered by the impugned order has not been affected.

In the facts and circumstances of the case as the order impugned impacts the petitioner with civil consequences, it could be passed only after providing him at least a minimum opportunity, a show-cause notice, which has not been done. The order therefore suffers a fatal infirmity and should perish therefore. It is accordingly set aside.

The writ petition is allowed but in the circumstances without costs.

GODA RAGHURAM,J

14TH NOVEMBER 2006

*TSNR